

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

07/11/2002

CLERK OF THE COURT
FORM D000C

HONORABLE MICHAEL D. JONES

P. M. Espinoza
Deputy

FC 2002-002390

FILED: _____

JEANNE M GAN

MARIA E LAWRENCE

AND

ALEXANDER MUTCH

ALEXANDER MUTCH
28656 N 45TH WAY
CAVE CREEK AZ 85331

REMAND DESK CV-CCC
SCOTTSDALE CITY COURT

MINUTE ENTRY

This Court has jurisdiction of this appeal involving a Domestic Violence Order of Protection pursuant to the Arizona Constitution Article VI, Section 16, and A.R.S. Section 12-124(A).

This case has been under advisement since May 31, 2002, which was the date the Appellee's memorandum was due. Appellant filed an Opening Memorandum; however, Appellee has chosen not to file a memorandum. This Court has considered the record of the proceedings from the Scottsdale City Court and Appellant's Memoranda.

Appellant, Jeannie M. Gan, was also the Plaintiff in the Scottsdale City Court who petitioned for an Order of Protection on August 24, 2001. That petition was granted in an order dated August 24, 2001. After service upon Appellee, Appellee requested a hearing. A hearing was held before the Scottsdale

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City Court on February 24, 2002. At that hearing, Appellant's attorney requested that the trial judge modify the Order of Protection as previously granted to include an order prohibiting Appellee from coming within a certain specified distance of Appellant. The trial court declined to enter this order.

On appeal Appellant contends that the trial court erred in denying her request for entry of an order that Appellee stay a certain and specified distance (in a number of feet) away from her at all times. Appellant's concern involves the fact that Appellee (who is Appellant's father) is Appellant's mail carrier and has been delivering mail to her residence. Appellant requests that this court order Appellee to remain at least 300 feet from Appellant at all times.

Appellant asks this court to substitute its own judgment for that of the trial court without making a showing that the trial court has abused its discretion. An appellate court must not re-weigh the evidence to determine if it would reach the same conclusion as the original trier of fact.¹ All evidence will be viewed in a light most favorable to sustaining a conviction and all reasonable inferences will be resolved against the Defendant.² If conflicts in evidence exists, the appellate court must resolve such conflicts in favor of sustaining the verdict and against the Defendant.³ An appellate court shall afford great weight to the trial court's assessment of witnesses' credibility and should not reverse the trial court's weighing of evidence absent clear error.⁴

¹ *State v. Guerra*, 161 Ariz. 289, 778 P.2d 1185 (1989); *State v. Mincey*, 141 Ariz. 425, 687 P.2d 1180, cert.denied, 469 U.S. 1040, 105 S.Ct. 521, 83 L.Ed.2d 409 (1984); *State v. Brown*, 125 Ariz. 160, 608 P.2d 299 (1980); *Hollis v. Industrial Commission*, 94 Ariz. 113, 382 P.2d 226 (1963).

² *State v. Guerra*, supra; *State v. Tison*, 129 Ariz. 546, 633 P.2d 355 (1981), cert.denied, 459 U.S. 882, 103 S.Ct. 180, 74 L.Ed.2d 147 (1982).

³ *State v. Guerra*, supra; *State v. Girdler*, 138 Ariz. 482, 675 P.2d 1301 (1983), cert.denied, 467 U.S. 1244, 104 S.Ct. 3519, 82 L.Ed.2d 826 (1984).

⁴ *In re: Estate of Shumway*, 197 Ariz. 57, 3 P.3rd 977, review granted in part, opinion vacated in part 9 P.3rd 1062; *Ryder v. Leach*, 3 Ariz. 129, 77P. 490 (1889).

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This Court notes that the trial court included within the Order of Protection a provision in paragraph 5 which ordered:

Defendant shall not go on or near
where Plaintiff and/or (blank) resides:
7741 East Black Rock Road, Scottsdale.⁵

It is entirely understandable that the Scottsdale City Court judge would feel that its blanket order quoted above prohibiting Appellee from going on or near where Plaintiff resides would be entirely sufficient. Other than argument, Appellant has failed to show that the trial judge's order was insufficient and constituted an abuse of discretion. Finding no abuse of discretion, this Court must affirm the trial court's ruling.

IT IS ORDERED affirming the Scottsdale City Court's order of January 25, 2002 affirming the Domestic Violence Order of Protection, originally issued August 24, 2001.

IT IS FURTHER ORDERED remanding this matter back for all further and future proceedings to the Scottsdale City Court.

⁵ Domestic Violence Order of Protection, record on appeal from Scottsdale City Court.
Docket Code 019